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Argued On merits April 13, 1882

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SUPREME COURT OF THE UNITED STATES.

No. 874. 384

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

JOHN A. MORRIS, FREEMAN CLARK, CHAS. T. HOWARD, JOHN KLEIN, AND JACK WHARTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 3, 1879.

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1 UNITED STATES OF AMERICA.

Circuit Court of the United States in and for the Fifth Judicial Circuit and District of Louisiana.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } No. 8,643.—In equity.

Bill of Complaint, filed January 16th, 1879.

To the Honorable the Judges of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana.

The city of New Orleans, a municipal corporation chartered by and organized under the laws of the State of Louisiana, and, as such, a citizen of said state, herein appearing by the Hon. Isaac W. Patton, her mayor, brings this her bill against John A. Morris, a citizen of the State of New York, residing in the State of Louisiana; Freeman Clark, a citizen and resident of the State of New York; John Klein, a citizen and resident of the State of Mississippi;
2 Chas. T. Howard and Jack Wharton, both citizens and residents of the State of Louisiana.

And thereupon your oratrix complains and says:

That the said John A. Morris, Freeman Clark, John Klein, and Charles T. Howard as the subrogee of Myra Clark Gaines, having respectively obtained judgments in this honorable court against your oratrix in the suits entitled "John A. Morris vs. The City of New Orleans, No. 7,362; Freeman Clark vs. Jefferson City Gas-Light Co. et als., No. 7,142; Freeman Clark vs. Jefferson City Gas-Light Co. and City of New Orleans, No. 8,349; John Klein vs. City of New Orleans, No. 7,801; and Myra Clark Gaines, Charles T. Howard subrogated, vs. City of New Orleans, No. 2,695 of the docket of this honorable court, have caused writs of *alias pluries fieri facias* and writs of *fieri facias* to issue thereunder, have placed the said writs in the hands of Jack Wharton, the marshal of this hon. court, and have caused him to seize thereunder and to advertise for sale on Saturday, the 18th day of January, 1879, the following-described property, to wit:

"All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four (4,344) shares of its cap-
3 ital stock, more or less"—

All of which will more fully appear by reference to the notices of seizure directed to and served upon your oratrix, fully describing said property, and by reference to the official advertisement of sale, which are hereto annexed and made part of this bill, and numbered Exhibits A, A 2, A 3, A 4, A 5, and A 6.

Now, your oratrix complains and says, that, on the 1st day of April, 1833, the legislature of the State of Louisiana passed an act to incorporate the Commercial Bank of New Orleans, and con-

ferred on said bank, so incorporated, the exclusive privilege of supplying the inhabitants of the city of New Orleans with water from the Mississippi River by means of pipes and machinery; that said act provided that at any time after the expiration of thirty-five years from the passage of said act, it should be lawful for the corporation of the city of New Orleans to purchase from said Commercial Bank the water works constructed by said company in virtue of said act, and that said bank should not refuse to sell said works as aforesaid; that, by said act, it was further provided that

4 the price to be paid by the city of New Orleans for said water works should be paid in bonds of the city of New Orleans, bearing five per cent. interest, payable semi-annually, and that on such payment being made the water works were to be delivered to the city.

That on the 27th day of March, 1868, a few days before the expiration of the thirty-five years fixed in the act of April 1st, 1833, the city council of New Orleans, your oratrix, resolved to purchase said water works on the terms prescribed by said act of 1833; that the arbitrators appointed under said act of 1833 appraised said works at $2,000,000.00, payable in city bonds; but that, as your oratrix owned 5,000 shares of the stock of said company, valued at $500,000, and was also entitled as a stockholder to an interest in a sinking fund owned by said bank, which said interest of your oratrix was valued at $106,600.00, your oratrix was compelled to deliver to said Commercial Bank, in payment of the price of said water works, bonds to an amount of only $1,393,400.00.

That accordingly, on the 19th day of January, 1869, said Commercial Bank, by notarial act, sold and delivered said water works to your oratrix, who thereafter continued to control and manage the same as sole owner down to the year 1878.

5 That in the charter of your oratrix, passed in the year 1870 by the legislature of the State of Louisiana, under which your oratrix now exists and performs her governmental functions, a special department was created, known as the Department of Water Works and Public Buildings, and a special officer was created, known as the administrator of water works and public buildings, whose duty it was to control and administer said water works as a necessary and vital instrumentality of a great municipal corporation.

That in the year 1877, the legislature of the State of Louisiana finding your oratrix in a bankrupt condition, her citizens impoverished, her taxable property enormously decreased in value, harassed by her creditors and unable to pay the interest on her debt, and notably the interest on the bonds issued by your oratrix in payment of the purchase price of said water works, and unable to extend said water works as the exigencies of the city required, did, on the 31st day of March of said year, pass an act known as act No. 33 of the extra session of 1877, and entitled "An act to enable the

city of New Orleans to promote the public health, and to afford greater security against fire by the establishment of a cor-
6 poration to be called the 'New Orleans Water-Works Company;' to authorize said company to issue bonds for the purpose of extending and improving the said water works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans," as will more fully appear by reference to said act, a printed copy of which is hereunto annexed and made part of this bill, and numbered Exhibit "B."

That under the provisions of section four of said act your oratrix has transferred to said company by notarial act the said water works purchased by your oratrix from the Commercial Bank on the 19th day of January, 1869.

That under the provisions of section seven of said act No. 33 of the acts of the extra session of 1877, the stock owned by your oratrix in said water-works company, under the provisions of said act was expressly declared not liable to seizure for the debts of your oratrix.

Now your oratrix avers and says that the said Morris, Clark,
7 Klein, Howard, and Wharton have no right to seize her interest in the said New Orleans Water-Works Company, a corporation created by and under the authority of the State of Louisiana, in violation of the prohibition contained in the charter of said corporation.

That even if there should have been no prohibition in said act against the seizure and sale of the rights of your oratrix in said water-works company, the said rights were by their nature and character not liable to such seizure, for the reason that the interest of your oratrix in said company is public property, used for public and necessary purposes, and essential to the proper exercise of the public powers of your oratrix.

That under the provisions of the charter of said water-works company, your oratrix could not herself dispose of the stock owned by her in said company, except in the manner and for the purposes therein mentioned.

That by section 14 of said act No. 33 of the extra session of 1877, it is provided that the city of New Orleans through its council, shall have authority to apply the stock subscribed for by said city as therein provided, to the reduction of the bonded and floating debt of said city, on such terms of adjustment as may
8 be mutually agreed upon between the city council and the holders of such bonded or floating debt, and that by virtue of said provision, your oratrix holds said stock in trust for the benefit of the holders of such bonded and floating debt, and that in compliance therewith she has been and still is applying the stock

subscribed for and owned by her in said company to the reduction of said bonded and floating debt, and that said Morris, Clark, Klein, Howard, and Wharton have no right to arrest, hinder, prevent, or delay her in the execution of said trust, or to divert said trust property from the object to which it is specially dedicated by law and the charter of said New Orleans Water-Works Company, or to divert said trust property solely and exclusively to their own use, as they are attempting to do by these illegal seizures and sales, to the great wrong and injury of the other *cestui que trusts*.

Your oratrix further complains and says, that should John A. Morris, Freeman Clark, John Klein, Charles T. Howard, and Jack Wharton, U. S. Marshal of this hon. court, be permitted to persist in their said illegal seizure, advertisement, and sale of your
9 oratrix's right, title, and interest in the New Orleans Water-Works Company, consisting of 4,344 shares of its capital stock, more or less, such acts will cause great and irreparable injury to your oratrix, and also to the public interests of which she is the protector and guardian.

Wherefore your oratrix prays that the said John A. Morris, Freeman Clark, John Klein, Charles T. Howard, and Jack Wharton, their and each of their attorneys or agents, may be severally restrained, by an injunction issuing out of this court, from proceeding any further with the said seizures, advertisement, and sale of the property above described, and under the judgments and executions above set forth; and that the said executions and the said seizures may be quashed, annulled, and set aside, and the said property declared to be exempt from and not subject to seizure; and that a restraining order may issue from this honorable court directed to the said John A. Morris, Freeman Clark, John Klein, Chas. T. Howard, and Jack Wharton, staying the said sale until the application herein made for an injunction can be heard; and that your oratrix may have generally such other and further relief as equity and the nature of this case may require.

10 Therefore, will Your Honors grant unto your oratrix the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said defendants, John A. Morris, Freeman Clark, John Klein, Charles T. Howard, and Jack Wharton, commanding them and each of them, by a certain day and under a certain penalty therein inserted, to appear before Your Honors in the Circuit Court of the United States for the Fifth Circuit and District of Louisiana, and then and there answer the premises, and abide the order and decree of the court.

Signed: E. HOWARD McCALEB,
City Atty.

Signed: E. A. FARRAR,
Solicitor for Complainant.

Personally came and appeared before me, the undersigned authority, Isaac W. Patton, who being duly sworn, deposes and says

that he is mayor of the city of New Orleans, the complainant in the above bill; that he has read the same and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

11 Signed: I. W. PATTON,
Mayor City of New Orleans.

Sworn to and subscribed before me, this 16th day of January, 1879. Signed: F. A. WOOLFLEY,
Commr. U. S. Circuit Court, District of La.

Exhibit "A," filed with Bill January 16th, 1879.

NEW ORLEANS, *December 21st*, 1878.

In the United States Circuit Court for the District of Louisiana.
United States Marshal's Office,
District of Louisiana.

JOHN A. MORRIS
vs.
CITY OF NEW ORLEANS. } No. 7,362.

To the City of New Orleans:

Take notice that I have seized, and in three days from the service hereof, shall proceed to advertise and sell, according to law, the following-described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four
12 thousand three hundred and forty-four (4,344) shares of its capital stock, more or less, to pay and satisfy the alias plurries writs of fieri facias issued in the above cause, say the sum of $33,000 exclusive of interest and costs.

Signed: W. G. ELLIOTT, *Deputy Marshal.*

Endorsed: Rec'd mayor's office, Decr. 21, '78, and on same day referred to city atty., thro' Dept. of Pub. Accts. Signed: E. L. Bower, C. C.

Exhibit "A 2," filed with Bill January 16th, 1879.

NEW ORLEANS, *December 21st*, 1878.

In the United States Circuit Court for the District of Louisiana.
United States Marshal's Office,
District of Louisiana.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET AL. } No. 7,142.

To the City of New Orleans:

Take notice that I have seized, and in three days from the
13 service hereof, shall proceed to advertise and sell, according to law, the following-described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four (4,344) shares of its capital stock, more or less, to pay and satisfy the alias writ of fieri facias issued in the above cause, say the sum of $7,200 exclusive of interest and costs. Signed: W. G. ELLIOTT,
Deputy Marshal.

Endorsed: Rec'd mayor's office, Dec'br 21, '78, and on same day referred to city atty., thro' Dept. of Pub. Accts. Signed: E. L. Bower, C. C.

Exhibit "A 3," filed with Bill January 16th, 1879.

NEW ORLEANS, *December 21st*, 1878.

In the United States Circuit Court for the District of Louisiana.

United States Marshal's Office,
District of Louisiana.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. AND THE City of New Orleans. } No. 8,349.

14 To the City of New Orleans:

Take notice that I have seized, and in three days from the service hereof, shall proceed to advertise and sell, according to law, the following described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four shares of its capital stock, more or less, to pay and satisfy the writ of fieri facias issued in the above cause, say the sum of $14,400 exclusive of interest and costs.

Signed: W. G. ELLIOTT,
Deputy Marshal.

Endorsed: Rec'd mayor's office, Dec'br 21, '78, and on same day referred to city atty., thro' Dept. of Pub. Accts. Signed: E. L. Bower, C. C.

Exhibit "A 4," filed with Bill January 16th, 1879.

NEW ORLEANS, *December 21st*, 1878.

In the United States Circuit Court for the District of Louisiana.

United States Marshal's Office,
15 District of Louisiana.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7,801.

To the City of New Orleans:

Take notice that I have seized, and in three days from the ser-

vice hereof, shall proceed to advertise and sell, according to law, the following-described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four (4,344) shares of its capital stock, more or less, to pay and satisfy the alias pluries writ of fieri facias issued in the above cause, say the sum of $89,000 exclusive of interest and costs, subject to such deductions as is mentioned in the writ. Signed: W. G. ELLIOTT,

Deputy Marshal.

Endorsed: Rec'd mayor's office, Dec'br 21, '78, and on same day referred to city atty., thro' Dept. of Pub. Accts. Signed: E. L. Bower, C. C.

16 *Exhibit "A 5," filed with Bill January 16th, 1879.*

NEW ORLEANS, *Jan'y 7th*, 1879.

In the United States Circuit Court for the District of Louisiana.

United States Marshal's Office,
District of Louisiana.

MYRA CLARK GAINES, CHAS. T. HOWARD, SUBROGEE, *vs.* CITY OF NEW ORLEANS. } No. 2,695.

To the City of New Orleans:

Take notice that I have seized, and in three days from the service hereof, shall proceed to advertise and sell, according to law, the following-described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four (4,344) shares of its capital stock, more or less, to pay and satisfy the writ of fi. fa. issued in the above cause, say the sum of $6,625 exclusive of interest and costs.

Signed: C. R. STEELE, *Deputy.*

17 *Endorsed:* Received N. O., Jan'y 7, '79, and referred same date to city attorney, through Department of Public Accounts. Signed: R. C. Morgan, clk.

Exhibit "A 6," filed with Bill January 16, 1879.

[Extract from "New Orleans Times."]

U. S. Marshal's Sale.

United States marshal's sale. John Klein vs. City of New Orleans, No. 7,801, alias pluries fieri facias; John A. Morris vs. City of New Orleans, No. 7,362, alias pluries fieri facias; Freeman Clark vs. Jefferson City Gas-Light Co. et al., No 7,142, alias fieri facias; Freeman Clark vs. Jefferson City Gas-Light Co. and City of New Orleans, No. 8,349, fieri facias.

In the United States Circuit Court for the Fifth Circuit and District of Louisiana.

By virtue of the four (4) above-mentioned writs of fieri facias, to me directed in the above-entitled suits, I will proceed to sell to the highest bidder, on Saturday, the 18th day of January, 1879, at 12 o'clock M., at the main entrance to the custom-house,
18 on Canal street, in New Orleans, the following-described property, viz:

All the right, title, and interest of the city of New Orleans in the New Orleans Water-Works Company, consisting of four thousand three hundred and forty-four (4,344) shares of its capital stock, more or less.

Seized in the above-entitled suits.

Terms cash.

United States Marshal's Office, New Orleans, January 4, 1879.

JACK WHARTON,
Jan. 4, 8, 13, 18. *United States Marshal.*

Exhibit "B," filed with Bill January 16th, 1879.

Official. Laws of the State of Louisiana. Published by authority. Extra Session of 1877.

No. 33.—An act to enable the city of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Water-Works Company;" to authorize the said company
19 to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That a corporation be and the same is hereby created, to be styled "The New Orleans Water-Works Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

Sec. 2. Be it further enacted, etc., That immediately after the organization of the said water-works company, as hereinafter provided, it shall be required to issue to the city of New Orleans stock to the amount of six hundred and six thousand six hundred dollars, as full paid and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of water-works bonds which said city may have taken up heretofore and extinguished by payment, exchange, or otherwise; and that
20 the residue of said capital stock shall be reserved for the benefit of all holders of water-works bonds, to the extent of

the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said water-works company shall issue to the said city of New Orleans, to be exchanged with the holders of said bonds, one share of full-paid stock, not subject to assessment, for each and every one hundred dollars of said water-works bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be canceled; that, for the purpose of effecting said exchange of outstanding water-works bonds for stock as aforesaid, the city of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Water-Works Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the city of New York, give notice that it will exchange said stock at par for said water-works bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city; and in case any of the said bondholders shall fail or refuse to avail themselves of this act
21 within one year from the formation of said company, the said city of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

Sec. 3. Be it further enacted, etc., That the said water-works company shall be organized by the mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said water-works bonds which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and canceled by the administrator of finance, the said subscribers shall assemble together, on a day to be named by the mayor, and shall elect a board of directors, to consist
22 of seven members, four of whom shall be designated by the mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first board of directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said board shall elect one of their number as president.

Sec. 4. Be it further enacted, etc., That, as soon after the election of said board of directors as the city council may determine, the mayor of the city shall transfer, by notarial act, to said New Orleans Water-Works Company the water works and all the property appurtenant thereto.

Sec. 5. Be it further enacted, etc., That the said water-works company shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank; that it shall have, for fifty years from the passage of this act, the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi River, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines or machines for that purpose; that it
23 may contract for, purchase, or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city; and to construct, dig, or cause to be opened, any canal or trenches whatsoever for the conducting of the water of the rivers from any place or places it may deem fit; and to raïse and construct such dykes, mounds, reservoirs as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans: Provided, the same shall not be an obstruction to commerce or free circulation; and, also, to have and use a common seal, and alter the same at pleasure; to ordain and establish by-laws for its government and that of its officers and employés, not repugnant to this act and the constitution of the state and of the United States, or the ordinances of the city of New Orleans.

24 Sec. 6. Be it further enacted, etc., That, on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the same and place of holding the same, shall be held, at which election there shall be elected four directors by all the stockholders other than the city of New Orleans; and the mayor of the city, the administrator of water works and public buildings, and the administrator of finance of said city shall be ex-officio directors of said company. The said city, through its mayor and administrators, shall have the right to vote at the election of directors, and at all meetings of said stockholders, in the same manner as any other stockholder. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The directors elected shall serve for one year, and shall hold their offices until their successors are appointed; and no failure to elect directors at the time designated shall prevent the board of directors from fixing another day for holding the election; and in case of vacancy in the board of directors, occasioned by death, resignation, or absence from the state, or other cause, the board
25 of directors may fill such vacancy for the remainder of the year.

Sec. 7. Be it further enacted, etc., That the stock owned by the said city of New Orleans in said water-works company, shall not be liable to seizure for the debts of said city.

Sec. 8. Be it further enacted, etc., That the stock of said water-works company may be increased to two millions of dollars, for the purpose of enabling said company to improve, enlarge, and extend its works: Provided, that the new or increased stock shall be paid for in cash, or in work done for the company; and in case of non-payment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

Sec. 9. Be it further enacted, etc., That the board of directors of said company shall have power, in addition to its authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of pure water; and to accomplish this purpose, the said board of directors are hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said board
26 may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans, shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re-inscription: Provided, however, that no bond shall be issued, or mortgage given, without the consent of the council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said council of said city.

Sec. 10. Be it further enacted, etc., That said company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt; nor shall any dividends be declared until the contemplated works are completed and in use.

Sec. 11. Be it further enacted, etc., That the city of New
27 Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets, and charitable institutions; and that the said company shall place, free of any charge whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of

fires, for watering the streets, and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners. It shall be the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Water-Works Company, used in accordance with this act, shall be exempt from taxation—state, municipal, and parochial.

Sec. 12. Be it further enacted, etc., That the said water-
28 works company shall have the right in the city of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water: Provided, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs; and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the city surveyor. In case the said water-works company shall require any lot of ground in the city of New Orleans, or any lot of ground or quantity of land situated in any parish of this state, for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the city of New Orleans, and shall not be able to agree with the proprietor or proprietors of said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may be hereafter enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not
29 to the rights of absolute ownership.

Sec. 13. Be it further enacted, etc., That the said water-works company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi River or elsewhere, and may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act, and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the city of New Orleans, exclusive of the fifth district. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall from time to time, as the

wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum,
30 extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said water-works company to comply with this provision shall work a forfeiture of this charter.

Sec. 14. Be it further enacted, etc., That the city of New Orleans, through its council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be agreed upon between the city council and the holders of such bonded or floating debt: Provided said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the council reserving the right to reject any and all bids.

Sec. 15. Be it further enacted, etc., That the said water-works company shall have the right to fix the rate of charges for water: Provided, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the city council shall
31 have the power to appoint a committee of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent., the city council shall have the right to require said company to reduce the price of water in such manner and in such a proportion that the profits shall never exceed those now paid by the city, and in case said company shall refuse compliance, the demand of said city may be enforced by a writ of mandamus.

Sec. 16. Be it further enacted, etc., That if any person or persons shall obstruct the said company, their successors, agents, workmen, or servants, in carrying the said water into the said city and its suburbs, or shall change, alter, remove, injure, or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the city of New Orleans under the authority of this act; or if any person shall alter, change, or pollute the water or stream which the said company shall hereafter introduce or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such of-
32 fence, and being thereof convicted, shall be fined, at the discretion of the court, according to the nature of the offence, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

Sec. 17. Be it further enacted, etc., That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the city council, and the

superintendence thereof remain in the hands of the administrator of water works and public buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts—two to be named by the city, two by the company, and the four to elect the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

33 Sec. 18. Be it further enacted, etc., That nothing in this act shall be so construed as to prevent the city council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy.

WILL. A. STRONG, *Secretary of State.*

No. 43.—An act relative to the charter of the New Orleans Water-Works Company, and amending an act number thirty-three of extra session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That at the election to be held on the first Monday of July, eighteen hundred and seventy-eight (1878), and annually thereafter, for directors of the New Orleans Water-Works Company, the

34 the stockholders of the said New Orleans Water-Works Company shall elect four directors; but the city of New Orleans shall not vote at said election, she being already fully represented for the amount of her stock by the mayor of the city, the administrator of water works and public buildings, and by the administrator of finance, who are *ex-officio* directors of said company.

Sec. 2. Be it further enacted, etc., That section ten (10) of said act number thirty-three (No. 33) of extra session of the year eighteen hundred and seventy-seven (1877), be amended and re-enacted so as to read as follows: "That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-

annual or annual receipts, after payment of expenses of operation and gradual extension and the interest on its bonded debt."

Sec. 3. Be it further enacted, etc., That section seventeen (17) of aforesaid act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts—two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water according to the provisions of the charter.

Sec. 4. Be it further enacted, etc., That the time allowed to the said New Orleans Water-Works Company to commence and proceed to the erection of new works and pipes (as contemplated by said act number thirty-three) (No. 33), shall commence six months after the organization of said company, and not from the date of the passage of said act.

Sec. 5. Be it further enacted, etc., That the full, complete, and adequate supply of water referred to in section thirteen (13) of said act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the water works now exist.

Sec. 6. Be it further enacted, etc., That the word "state" in section eleven (11) of said act No. 33 of 1877, and in the last line thereof, be stricken out, so that the said company shall not be exempt from state taxation.

Sec. 7. Be it further enacted, etc., That all laws or parts of laws contrary to the provisions of this act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.
(Signed) LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy. WILL. A. STRONG, *Secretary of State.*

By-Laws.

(Adopted May 24, 1878.)

Article I.

The order of business of the board shall be—

1. The calling of the roll.
2. Reading of the minutes.

3. Communications and reports from the president.
4. Reports from the secretary and treasurer.
5. Reports from standing committees.
37 6. Reports from special committees.
7. Unfinished business.
8. New business.

Article II.

The president shall have the management and supervision of the affairs of the company, subject to the control of the board of directors; he shall, *ex officio*, be a member of all standing committees. He shall annually prepare and exhibit to the stockholders, within thirty days preceding the annual election, an account of the operations of the company during the year, and a statement of its property and resources, its funded or floating debt, and its outstanding contracts and contingent liabilities.

Article III.

The secretary shall be elected by the board of directors. He shall receive and receipt for all moneys belonging to the company, and deposit the same daily in a bank selected by the board to the credit of the New Orleans Water-Works Company, and the same shall only be drawn from the bank by checks signed by the president and countersigned by the secretary. He shall pay no bills or accounts unless approved by the president. He shall attend all meetings of the board, and, when required, all meetings
38 of committees. He shall keep full minutes of all the proceedings of the board and of committees. He shall have charge of the records, books, and papers of the company. He shall give written notice to the directors of all regular and special meetings, and, whenever a special committee shall have been appointed in pursuance of a resolution of the board, he shall furnish the chairman of said committee with a copy of the resolution and the names of the members composing said committee. He shall keep a complete set of books, arranged in such a manner as to show clearly the receipts and disbursements of the company, under convenient and appropriate heads; they shall be written up daily.

He shall, at the annual meeting of the stockholders, render an account of the financial condition, as well as a general statement of the affairs of the company; and once every month he shall furnish the board a statement showing in detail the receipts and disbursements since the previous meeting, and the balance on hand; and he shall generally perform all the duties pertaining to the office, under the supervision of the president. It shall also be his duty to act as paymaster of the employés of the company.

39 Article IV.

At least ten days' notice, in two papers published in the city of New Orleans, shall be given of all elections held for directors of this company.

The election shall take place at the office of the company, under the supervision of three commissioners, to be appointed by the board of directors from among the stockholders. Should any of the commissioners refuse or fail to attend, the president is authorized to appoint any one or more stockholders to fill their places.

The time of voting shall be from 11 o'clock A. M. to 2 P. M. The new board shall take their seats on the first Tuesday in July. The directors shall at their first meeting proceed to organize by electing one of their number president.

Article V.

In case of vacancy in the board of directors, occasioned by death, resignation, absence from the state, or other cause, the board of directors may fill such vacancy for the remainder of the year as provided in section 6 of the charter.

Article VI.

No transfer of stock shall be made except on the transfer-
40 book of the company, upon surrender of the old certificate of stock, which shall be cancelled by the secretary writing "Cancelled" prominently across the face thereof, and by erasure of the president's and secretary's signatures therefrom, before issuing a new one. The cancelled certificates to be numbered and filed.

No transfer shall be made during the week next preceding nor on the day of the annual election for directors, nor for fifteen days next prior to the time appointed for the payment of dividends.

No certificate shall be issued in place of one alleged to be lost, unless upon the production of legal evidence of the loss, and an advertisement by the company, for at least thirty days, (at the expense of applicant,) setting forth the number of the certificate lost, the name of the holder, the number of shares therein called for, and the date of issue.

Article VII.

During the week next preceding the annual election of directors the secretary shall prepare a list of all the stockholders of the company (other than the city of New Orleans), alphabetically arranged, showing the number of shares held by each, which list, when
41 completed and collated, with the stock-ledger, shall be sworn to and certified correct by the president and secretary of the company, and handed over by them to the election commissioners appointed by the board, as their guide in supervising the election.

Article VIII.

At all meetings of the board each member shall have one vote; the president to have only the casting vote in case of a tie.

Article IX.

These by-laws may be altered or amended, with the assent of the five directors, at any stated meeting of the board: Provided, written

notice of the proposed amendment shall have been given at the previous stated meeting.

Article X.

The board of directors shall meet on the first Wednesday of each month, at half-past seven o'clock P. M. The president may call special meetings of his own motion, or at the request of any two directors.

Article XI.

Whenever special meetings are called, the object of the meeting shall be stated in the call, unless the matter requires secrecy. All matters not embraced in the call shall be out of order at such special meetings.

42 *Affidavit of service of Notice of Application for Injunction, filed Januaay 16th, 1879.*

U. S. Circuit Court, District of Louisiana.

CITY OF NEW ORLEANS *vs.* JOHN A. MORRIS ET ALS. } No. 8,643.

Personally came and appeared before me, the undersigned authority, E. H. Farrar, who being duly sworn, deposes and says, that, as solicitor for the complainant in this cause, he has an agreement with Messrs. Thomas & Lewis, solicitors for John A. Morris, Freeman Clark, and John Klein, that the application for injunction herein should be applied for in open court before Hon. W. B. Woods, on Thursday, January 16th, 1879, at 11 o'clock, and that on January 13th, 1879, he served on Jack Wharton, U. S. marshal, and Charles T. Howard, in person, a written notification of the said time [*and*] place of this application.

Signed: E. H. FARRAR.

Sworn to and subscribed before me, this 16th day of January, 1879. Signed: F. A. WOOLFLEY,
Comm'r U. S. Circuit Court Dist. of La.

43 *Subpœna to Jack Wharton, U. S. Marshal.*

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the District of Louisiana, greeting:

You are hereby commanded to summon Jack Wharton, a citizen of the State of Louisiana, to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1879, then and there to answer a bill in chancery filed against him and others, wherein the city of New Orleans is complainant and Jack Wharton and others are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and the 103d year of American independence.

[SEAL.] Signed: F. B. VINOT, *Dy. Clerk.*

44 The defendant is hereby notified that he his required to enter his appearance in the clerk's office of the United States Circuit Court, on or before the first Monday of March, 1879, otherwise the bill may be taken *pro confesso.*

Signed: F. B. VINOT, *Dy. Clerk.*

Marshal's Return.

Received Jan. 17, 1879, by the U. S. marshal, and accepted service.

Signed: W. G. ELLIOTT, *Dy. Marshal.*

Subpœna to Chas. T. Howard.

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the District of Louisiana, greeting:

You are hereby commanded to summon Charles T. Howard, a citizen of the State of Louisiana, to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1879, then and there to answer a bill in chancery
45 filed against him and others, wherein the city of New Orleans is complainant and said Charles T. Howard and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and the 103d year of American independence.

[SEAL.] Signed: F. B. VINOT, *Dy. Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States Circuit Court, on or before the first Monday of March, 1879, otherwise the bill may be taken *pro confesso.*

Signed: F. B. VINOT, *Dy. Clerk.*

Marshal's Return.

Received Jan. 17th, 1879, by the U. S. marshal, and on the 22d day of January, 1879, served a true copy of the within subpœna in

chancery on Charles T. Howard within named, by leaving the same at his domicile, corner of Brytania and Polymnia streets,
46 in the hands of Eliza Harris, an adult person living in the house, the said Charles T. Howard being absent at the time of service, all of which I learned by interrogating the said Eliza Harris. Signed: W. G. ELLIOTT, *Dy. Marshal.*

Subpœna to Jno. A. Morris.

UNITED STATES OF AMERICA.

The President of the United States of America to the Marshal for the District of Louisiana, greeting:

You are hereby commanded to summon John A. Morris, a citizen of the State of New York, to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1879, then and there to answer a bill in chancery filed against him and others, wherein the city of New Orleans is complainant and said John A. Morris and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

47 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and the 103d year of American independence.

[SEAL.] Signed: F. B. VINOT, *Dy. Clerk.*

Marshal's Return.

Received January 17, 1879, by the U. S. marshal, and on the 20th day of January, 1879, served a true copy of the within subpœna in chancery on John A. Morris within named, through his solicitor, J. W. Thomas, Esq., by handing, the same to him, the said J. W. Thomas, in person, in the city of New Orleans.

Signed: W. G. ELLIOTT, *Dy. Marshal.*

Subpœna to John Klein.

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the District of Louisiana, greeting:

You are hereby commanded to summon John Klein, a citizen of the State of Mississippi, to appear before the Honorable the
48 Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1879, then and there to answer a bill in chancery filed against him and others, wherein the city of New Orleans is complainant and said John Klein and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, in the year of Lord one thousand eight hundred and seventy-nine, and the 103d year of American independence.

[SEAL.] Signed: F. B. VINOT, *Dy. Clerk.*

The defendant is hereby notified that he *is* required to enter his appearance in the clerk's office of the United States Circuit Court, on or before the first Monday of March, 1879, otherwise the bill may be taken *pro confesso.*

Signed: F. B. VINOT, *Dy. Clerk.*

Marshal's Return.

49 Received January 17, 1879, by the U. S. marshal, and on the 20th day of January, 1879, served a true copy of the within subpœna in chancery on John Klein within named, by hand-the same to him in person, in the city of New Orleans.

Signed: W. G. ELLIOTT, *Dy. Marshal.*

Subpœna to Freeman Clark.

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the District of Louisiana, greeting:

You are hereby commanded to summon Freeman Clark, a citizen of the State of New York, to appear before the Honorable, the Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1879, then and there to answer a bill in chancery filed against him and others, wherein the city of New Orleans is complainant and said Freeman Clark is defendant.

Herein fail not, and have then and there this writ, with your endorsement thereon, how you have executed the same.

50 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and the 103d year of American independence.

Signed: F. B. VINOT, *Dy. Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States Circuit Court, on or before the first Monday of March, 1879, otherwise the bill may be taken *pro confesso.*

Signed: F. B. VINOT, *Dy. Clerk.*

Marshal's Return.

Received Jan. 17, 1879, by the U. S. marshal, and on the 20th day of January, 1879, served a true copy of the within subpœna in chancery on Freeman Clark, within named, through his solicitor, J. W. Thomas, Esq., by handing the same to him, the said J. W. Thomas, in person, in the city of New Orleans.

Signed: W. G. ELLIOTT, *Dy. Marshal.*

Order Application for Injunction fixed.

Extract from Minutes of 16th January, 1879.

51 NOVEMBER TERM, 1878,
NEW ORLEANS, *Thursday, January 16th*, 1879.

Court met pursuant to adjournment. Present, Hon. Wm. B. Woods, circuit judge, Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JNO. A. MORRIS ET ALS. } No. 8,643.

On motion of E. H. Farrar, assistant city attorney, Kelly & Lazarus, Thomas & Lewis, solicitors for defendants, here present in open court taking notice hereof;

Ordered that complainant's application for an injunction *pendente lite* be set down for hearing on Wednesday, 22d instant, at 11 A. M.

Note of Evidence, filed January 22d, 1879.

CITY
vs.
MORRIS ET ALS. } 8,643.

Defendants offered the judgments favor J. A. Morris, Freeman Clark, Jno Klein; also the records in said cases; also the notices in the Democrat of 20th April, '78, 4th July, '78, 15th Jan'y, 1879; also affidavit of Jno. Klein.

City of New Orleans offered Records 7,362, 7,142, 7,801, 8,349, and 2,695, all in this court.

52 *Petition offered in evidence by Complainant and Defendants on hearing of Application for Injunction, January 22*, 1879.

U. S. Circuit Court, District of Louisiana.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET AL. } No. 7,142. Petition filed February 7th, 1874.

To the Honorable the Judges of the United States Circuit Court for the Fifth Judicial Circuit and District of Louisiana.

The petition of Freeman Clark respectfully showeth:

That he is a resident and citizen of the State of New York.

That he has cause to and does complain of the Jefferson City Gas-Light Company, a corporation under the laws of the State of Louisiana, having its domicile in the parish of Orleans in last-named state; and of the city of Carrollton, a municipal corporation under the laws of said Louisiana, and situated in the parish of Jefferson therein, for this, to wit: That on the 11th day of January, 1871,
53 the said gas-light company and the said city of Carrollton entered into an agreement which is embodied in an ordinance that day passed by the mayor and council of said city of Carrollton, which ordinance is as follows, to wit:

"An ordinance to facilitate the introduction of gas within the limits 'of the city of Carrollton, to provide for making a contract with 'the Jefferson City Gas-Light Company in relation thereto, and 'to authorize the issuance of bonds, &c."

"Whereas, under an act of the legislature of the state, approved 'March 9th, 1869, the Jefferson City Gas-Light Company is given 'the exclusive privilege of supplying gas-light in the territorial 'limits of the city of Carrollton; and whereas the said gas-light 'company proposes to lay pipes and introduce gas in the city under 'certain conditions: therefore—

"Section 1. Be it ordained, &c., That the mayor be and is hereby 'authorized to enter into a contract by public act with the said Jef-'ferson City Gas-Light Company, as follows:

"The said Jefferson City Gas-Light Company shall, within six 'months from the date of contract, or as soon as can be, lay an eight-'inch gas-main from the lower line of the city of Carrollton up 'St. Charles street to the Carrollton railroad depot, on one
54 'side of said street, and a three-inch main from lower line 'up the other side of St. Charles street to Canal avenue, and 'up Levee street from the aforesaid depot to the upper line of the 'city of Carrollton, with the necessary branches, boxes, &c., and as 'soon as practicable shall lay branch-mains, pipes, &c., out Carroll-'avenue, Dublin, Washington, and the other principal streets in 'order to light the said streets, and supply the citizens with gas-'light; also the said company shall provide and erect the necessary 'lamp-posts along the said line.

"That in consideration of the foregoing that the city of Carroll-'ton, through the mayor, shall provide and issue forty-five one thou-'sand dollars bonds of the city of Carrollton, payable in thirty years, 'with interest at eight per cent., payable semi-annually to the order 'of said gas-light company, which bonds shall be dated and delivered 'to the said gas-light company when the pipes, mains, &c., are laid, 'and the lamp-posts erected along the line of St. Charles street and 'Levee street from Lower-line street to Upper-line street, and gas 'turned on for use; provided the said company shall guarantee the 'said bonds and assume the payment of the principal thereof at 'maturity; and provided further, that if at maturity the said com-

'pany shall fail to pay said bonds, then the said city shall
55 'pay the same and become the owner of all the gas-works,
'main-pipes, posts, &c., then lying and being within the pres-
'ent limits of the city of Carrollton."

"That the treasurer of the city of Carrollton shall specially ap-
'propriate and set aside in lawful money every month such amount
'or proportion of the taxes and dues of said city as shall be neces-
'sary to meet the interest on said bonds, and such gas-bills as may
'accrue against said city. And that the mayor in said act shall be
'authorized to make such other agreements, not inconsistent here-
'with, as may be necessary to carry out the purposes of the ordi-
'nance, and make the said contract legal and conclusive on both
'parties thereto."

"Section 2. Be it further ordained, &c., That this ordinance shall
'take effect from and after its passage.

'Passed January 11th, 1871."

Petitioner further shows that in pursuance of the authority conferred by said ordinance, the mayor of said city of Carrollton entered into a contract with the said gas-light company, embracing the terms and stipulations contained in said ordinance, and the said company having complied with the said agreement and
56 the conditions fixed in said ordinance, and being fully entitled thereto, the mayor of said city of Carrollton caused to be provided and executed forty-five bonds of said city of Carrollton, each for one thousand dollars, bearing interest at eight per cent., payable semi-annually, which bonds were numbered from one to forty-five inclusive, and made payable thirty years from date, and they were dated the 1st day of July, A. D. 1871, and to said bonds were attached interest-coupons, wherein it was stipulated to pay to bearer the sum of forty dollars on each bond as interest, the coupons being due on the first day of January and the first day of July of each and every year, until the principal of said bonds should mature and become due. And on the first day of July, A. D. 1871, the said mayor delivered said bonds with coupons attached to the said gas-light company; and thereupon the said company by its president, John Lockwood, placed upon each of said bonds the following endorsement and guarantee, to wit: "The Jefferson City 'Gas-Light Company guarantee the payment of the principal and 'interest of this bond to the holder thereof. (Signed) John Lockwood, president."

57 That soon thereafter the said company for a good and valuable consideration sold and delivered the said bonds and coupons to petitioner, who is now the owner and holder thereof, and the sum paid for said bonds and coupons was received by and inured to the benefit of said gas-light company.

And petitioner further shows that the coupons of said bonds which fell due July 1st, 1872, January 1st, 1873, July 1st, 1873, and January 1st, 1874, the four series numbering in the aggregate

one hundred and eighty coupons, and each for the sum of forty dollars, are wholly due and unpaid; and that petitioner is the owner and holder thereof, and that there is due him from the said Jefferson City Gas-Light Company and the said city of Carrollton in solido on the said over-due coupons the aggregrate sum of seven thousand two hundred dollars, with interest thereon from judicial demand.

Petitioner alleges amicable demand and a refusal thereof.

Wherefore petitioner prays that the said Jefferson City Gas-Light Company and the said city of Carrollton, through their proper officers, be cited to answer the petition according to law, and on the final hearing hereof that he recover
58 judgment against said respondents in solido for the said sum of seven thousand two hundred dollars, with legal interest from judicial demand, and for costs. And that proper and necessary orders be made on the officers of the said city of Carrollton, and commanding them to provide the funds, as required in said ordinance, to pay the judgment herein demanded. And he prays for equitable relief.

Signed: HAYS & NEW, *Attorneys.*

Answer and Call in Warranty, filed February 26th, 1874, offered in evidence by Complainant and Defendants on trial of Application for Injunction, January 22d, 1879.

United States Circuit for Fifth Circuit and District of Louisiana.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET AL. } No. 7,142.

Now comes the Jefferson City Gas-Light Company, made defendant herein, by the undersigned counsel, and pleads a general denial to plaintiff's claim, and further answering, says: That the coupons sued on are the evidence of an indebtedness on the
59 part of the city of Carrollton, the other defendant in this case, the consideration of which was the compliance on the part of this respondent with a contract entered into between the said city of Carrollton and this respondent, that this respondent should, within six months of the date of said contract, lay an eight-inch gas-main from the lower line of the city of Carrollton up St. Charles street to the Carrollton railroad depot, on one side of said street, and a three-inch main from lower line up the other side of St. Charles street to Canal avenue, and up Levee street from the aforesaid depot to the upper line of the city of Carrollton, with the necessary branches, boxes, etc., and as soon as practicable lay branch-mains, pipes, &c., out Carroll avenue, Dublin, Washington, and the other principal streets of said city, in order to light said streets and supply the citizens with gas-light, and also provide and erect the necessary lamp-posts along the said line.

that the city of New Orleans be cited to appear and answer this and the original petitition; and, due proceedings, that petitioner have judgment *in solido* against the Jefferson City Gas-Light Company and the city of New Orleans for the sum of seven thousand two hundred dollars, with interest at 5 per cent. from judicial demand, and for costs and general relief.

Signed: HAYS & NEW, *Attys.*

(On margin:) Order: Let this amended and supplemental petition be filed. Signed: W. B. WOODS, *Judge.*

Answer of City of New Orleans to Petition and Call in Warranty, filed April 17, 1874, *offered in evidence by Complainant and Defendants on trial of Application for Injunction, January* 22*d*, 1879.

U. S. Circuit Court, District of Louisiana.

65 FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT COMPANY ET ALS. } No. 7,142.

And now before the court comes the city of New Orleans, and without waiving the exception filed by the city of Carrollton, and which this respondent requires shall be first disposed of, for answer to the amended and supplemental petition of plaintiff, and to the call in warranty filed by the Jefferson City Gas-Light Company, she denies each and every allegation and averment set forth and contained in the aforesaid amended petition and call in warranty, except such as may be hereinafter admitted, or which it may be to the interest of this respondent to admit.

And for further and special answer this respondent says: that the city of Carrollton was without legal power or authority to issue the bonds and coupons of interest referred to in plaintiff's petition; that her action in the premises was ultra vires; and that neither a legal nor a moral obligation rested upon the said city to pay the aforesaid bonds or coupons of interest, or any part or portion thereof.

Further answering says: that the legislature of the state
66 of Louisiana was without the power and authority to require this respondent to pay the bonds and coupons of interest aforesaid; and that any provision in the act referred to in plaintiff's petition, or in any law or statute of the state having that effect, is violative of the fundamental law, and for that reason and otherwise is absolutely null and void and without force and effect.

Wherefore this respondent prays that judgment may be rendered in her favor and against the said Freeman Clark and Jefferson City Gas-Light Company, and that this appearer may recover costs and have general relief in the premises.

Signed: GEO. S. LACEY, *City Atty.*
Signed: H. A. WALSH, *Ass't City Atty.*

Answer of Jefferson City Gas-Light Company to Supplemental Petition, filed March 26, 1874, offered by Complainant and Defendants on trial of Application for Injunction, January 22, 1879.

United States Circuit Court for Louisiana.

FREEMAN CLARK
vs.
THE JEFFERSON CITY GAS-LIGHT COMPANY. } No. 7,142.

Now comes the Jefferson City Gas-Light Company, one
67 of the defendants, through its undersigned attorneys, and for answer to the supplemental and amended petition filed by the plaintiff, says: that it denies generally all the allegations therein contained, tending in any way to show responsibility on the part of this respondent. Wherefore it prays to be hence dismissed with costs.

And this respondent further answering, saith: that by the contract with and ordinance of the city of Carrollton, and the statute of the State of Louisiana referred to and set forth by the plaintiff in his original and supplemental petition, the city of New Orleans is liable and is bound to hold this respondent harmless from any claim of the plaintiff, if any he have, which is denied, against this respondent.

Wherefore this respondent prays that the city of New Orleans be called in warranty and cited to answer this call in warranty, and be condemned to hold this respondent harmless against any judgment the plaintiff may obtain against this respondent; and furthermore, that the city of New Orleans be condemned to pay and satisfy any judgment the plaintiff may obtain against this respondent, and on that on this respondent pay all such judgment obtained against it in this case, it be homolgated to the right of the plaintiff and authorized to issue execution for the amount so paid, with
68 interest and costs, and for general relief.

Signed: SEMMES & MOTT,
Attys. for Jefferson City Gas-Light Co.
Signed: FRANK N. BUTLER,
Atty. for Jeff. City Gas-Light Co.

Judgment offered in evidence by Complainant and Defendants on trial of Application for Injunction, January 22d, 1879.

Circuit Court of the United States, Fifth Circuit and District of Louisiana. April term, 1875.

APRIL TERM, 1875,
NEW ORLEANS, *Monday, May 3d*, 1875.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, circuit judge.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET ALS. } No. 7,142.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, Freeman Clark, do have and recover from the Jefferson City Gas-Light Company, and from the city of New Orleans in solido, the sum of seven thousand and two hundred dollars, with 5 per cent. interest thereon from judicial demand till paid, and costs of suit.

69 It is further adjudged and decreed that on the call in warranty the said Jefferson City Gas-Light Company do recover from the city of New Orleans a like sum of seven thousand two hundred dollars, with like interest and costs.

Judgment rendered May 3d, 1875.

Judgment signed May 7th, 1875.

Signed: W. B. WOODS, *Judge.*

Petition filed in Superior District for the Parish of Orleans, February 18th, 1875; case transferred to U. S. Circuit Court for Louisiana, and filed March 15, 1875, under No. 7,362 of Docket U. S. C. C.; offered in evidence by Complainant and Defendant on trial af Application for Injunction, January 22d, 1879.

JOHN A. MORRIS
vs.
CITY OF NEW ORLEANS. } No. 26,370.

To the Honorable the Superior District Court for the Parish of Orleans.

The petition of John A. Morris, of the city of New York, and a citizen of the State of New York, with respect represents:

70 That the city of New Orleans, a corporation created by an act of the General Assembly of the State of Louisiana, and a citizen of said state, is indebted to petitioner in the sum of twenty-three thousand dollars, with interest as hereinafter mentioned, for this, to wit:

That petitioner is owner and holder of twenty-three bonds of one thousand dollars each, series B, and numbered 1,550, 1,474, 1,477, 1,444, 1,463, 1,462, 1,461, 1,549, 1,485, 1,486, 522, 580, 146, 149, 277, 285, 513, 534, 672, 761, 762, and 763, all dated 1st May, 1854, except one numbered 1,771, dated 1st January, 1855, and all are payable twenty years after their date, with six per cent. interest, payable semi-annually, as per coupons attached to said bonds, which bonds were issued by the defendant to the New Orleans, Jackson and Great Northern Railroad Company, and are endorsed by the secretary and treasurer of said railroad company, by whose endorsement said bonds are made transferable.

That said bonds are part of a series of two thousand, issued and delivered by the defendant, payable to the said railroad company or

its assignee, and authorized to be so issued in payment of the
71 subscription of the defendant to the capital stock of the said railroad company, under an act of the General Assembly of the State of Louisiana, approved 15th March, 1854, entitled "An act for the subscription of the city of New Orleans to the stock of the New Orleans, Jackson and Great Northern Railroad Company," and also in conformity with the provisions of an ordinance of the common council of the city of New Orleans, approved April 7th, 1854, entitled "An ordinance providing for the subscription by the city of New Orleans to the capital stock of the New Orleans, Jackson and Great Northern Railroad Company," which ordinance was ratified by the duly qualified voters of the city of New Orleans, on 21st day of April, 1854.

Wherefore petitioner prays that the said city of New Orleans (which after due demand has refused to pay said bonds at their respective maturities) be cited to appear and answer this petition, and after due proceedings, be condemned to pay petitioner the sum of twenty-three thousand dollars, with six per cent. per annum interest on $22,000 from 1st May, 1874, and on $1,000 from 1st January, 1875, and costs, and for general relief.

Signed: SEMMES & MOTT, *Attys.*

72 *Supplemental Petition in* 7,362, *offered by Complainant and Defendants on trial of Application for Injunction, January* 22, 1879.

JOHN A. MORRIS *vs.* CITY OF NEW ORLEANS. } Superior District Court. No. 26,370.

To the Honorable the Superior District Court for the Parish of Orleans.

The supplemental petition of John A. Morris, who resides in the city and State of New York, of which state he is a citizen, with respect represents:

That heretofore he filed his petition in this honorable court against the city of New Orleans, in the suit No. 26,370 on the docket, in which he claimed that the said city owed him a large sum of money as the maker of sundry bonds therein described.

That petitioner omitted to include in said suit ten other bonds held by him, constituting a part of the same series of two thousand bonds, authorized to be issued by the city of New Orleans in favor of the New Orleans, Jackson and Great Northern Railroad
Company, by virtue of the act of the general assembly and
73 the ordinance of the city of New Orleans mentioned in the original petition. Said ten bonds are of a thousand dollars each and all dated 1st May, 1854, and payable in the same manner as the bonds mentioned in the original petition, and in favor of the said payee and similarly endorsed, and transferable by similar en-

dorsements; these said supplementary bonds numbered as follows, viz: 129, 130, 132, 733, 734, 735, 736, 737, 738, 739, and 740, payment of all which has been amicably demanded.

Wherefore petitioner prays for leave to file this supplemental petition, that the said city of New Orleans be cited to answer hereto as well as to the original petition filed in this suit, and that the said defendant be condemned to pay petitioner the sum of ten thousand dollars, with six per cent. interest from the 1st May, 1874, in addition to the twenty-three thousand dollars and interest claimed in the original petition; that is to say, that the defendant be condemned to pay petitioner the full sum of thirty-three thousand dollars, with six per centum interest per annum from the 1st May, 1874, on thirty-two thousand dollars, and from the 1st day
74 of January, 1875, on one thousand dollars, and for costs and general relief.

Signed: SEMMES & MOTT, *Attys. of Plff.*

Order: Let this supplemental petition be filed, and the city of New Orleans cited as within prayed for.

March 3d, 1875. (Signed) JACOB HAWKINS, *Judge.*

Answer, filed April 2d, 1875, offered in evidence by Complainant and Defendants on trial of Application for Injunction, January 22, 1879.

U. S. Circuit Court, District of Louisiana.

JOHN A. MORRIS *vs.* CITY OF NEW ORLEANS. } No. 7,362.

Now comes the city of New Orleans, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Wherefore she prays to be hence dismissed with costs, and for all general and equitable relief.

Signed: B. F. JONAS, *City Atty.*

75 *Judgment, offered in evidence by Complainant and Defendants on hearing of Application for Injunction, January 22d, 1879.*

Circuit Court of the United States, Fifth Circuit and District of Louisiana. April Term, 1875.

NEW ORLEANS, *Friday, May 21st,* 1875.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, circuit judge.

JOHN A. MORRIS *vs.* CITY OF NEW ORLEANS. } No. 7,362.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, John A. Morris, do

have and recover from the city of New Orleans the sum of thirty-three thousand dollars, with six per centum interest per annum on thirty-two thousand dollars from 1st May, 1874, and on one thousand dollars from 1st January, 1875, till paid, and costs of suit.

Judgment rendered May 21st, 1875.

Judgment signed May 26th, 1875.

(Signed) W. B. WOODS, *Judge.*

76 *Petition, filed March 16, 1876, offered in evidence by Complainant and Defendants on hearing of Application for Injunction, January 22d, 1879.*

U. S. Circuit Court, District of Louisiana.

JOHN KLEIN
vs. } No. 7,801.
CITY OF NEW ORLEANS.

To the Honorable the Circuit Court of the United States, Fifth Circuit, District of Louisiana.

The petition of John Klein, a citizen and resident of the State of Mississippi, respectfully represents:

That the city of New Orleans, a municipal corporation of the State of Louisiana, within this judicial district, is justly and truly indebted to him in the sum of eighty-nine thousand dollars ($89,000), besides interest at six per cent. on $77,000 from May 1st, 1874, on $9,000 from January 1st, 1875, and on $3,000 from March 1st, 1875, until paid, for this, to wit: That he is the holder and owner, first, of forty-four bonds of one thousand dollars each, issued by the city of New Orleans to the New Orleans, Jackson and
77 Great Northern Railroad Company under and by virtue of the provisions of an act of the legislature of Louisiana, No. 109, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, thirty-two of said bonds, to wit, Nos. 111, 112, 113, 114, 127, 151, 154, 166, 324, 326, 397, 486, 487, 513, 523, 558, 668, 765, 768, 792, 969, 1,433, 1,449, 1,450, 1,453, 1,478, 1,479, 1,480, 1,481, 1,483, 1,484, and 1,556, redeemable May 1st, 1874, nine of said bonds, to wit, Nos. 1,811, 1,814, 1,815, 1,823, 1,825, 1,826, 1,827, 1,891, and 1,894, redeemable January 1st, 1875, and three of said bonds, to wit, Nos. 1,901, 1,903, and 1,984, redeemable March 1st, 1875, all letter B; and also forty-five bonds of one thousand dollars each, issued by the said city of New Orleans to the New Orleans, Opelousas and Great Western Railroad Company under and by virtue of the provisions of an act of the legislature of Louisiana, No. 108, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, said bonds, to wit, Nos. 85, 86, 87, 146, 158, 306, 451, 503, 504, 505, 506, 507, 509, 510, 511, 512, 515, 516, 517, 518, 523, 524, 525, 526, 527, 535, 631, 668, 676, 759, 764, 765, 766, 769,
78 794, 851, 852, 866, 868, 985, 1,011, 1,031, 1,032, 1,036,

and 1,120, all letter C, redeemable May 1st, 1874, all of said bonds having at their issue twenty years to run, and all past due from the above dates respectively, and bearing six per cent. interest from maturity, none of which interest or principal has been paid, although due, and amicable demand has been made, nor has said city made suitable provision for payment of either principal or interest as required by law, as will more fully appear from the said bonds, which will be produced on the trial of this case and which are annexed to and made part of this petition.

Wherefore, the premises considered, your petitioner prays that said city of New Orleans be duly cited, and that after all due proceedings he have judgment against the said city of New Orleans for eighty-nine thousand dollars ($89,000), with six per cent. interest on $77,000 from May 1st 1874, on $9,000 from January 1st, 1875, and on $3,000 from March 1st, 1875, until paid, and reserving the right to apply for an order to compel the said defendant to levy and collect a tax to pay said judgment; he further prays for costs and all general relief.

(Signed) J. Q. A. FELLOWS, *Atty.*

79 *List of City Bonds, "past due," favor railroads.*

Nos. 111, 112, 1,113, 1,114. 1,483, 1,484, 1,433, 513, 558, 969, 1,556, 397, 486, 487, 1,453, 1,481, 1,478, 1,479, 1,480, 1,449, 1,450, 523, 127, 324, 326, 668, 765, 768, 792, 151, 154, 166, letter B, favor N. O., Jackson & Gt. N. R. Rd., redeemable May 1, 1874, (32) bonds, $1,000 each.....	$32,000
Nos. 1,811, 1,814, 1,815, 1,823, 1,825, 1,826, 1,891, 1,894, letter B, favor N. O., Jackson & Gt. N. R. Rd., redeemable January 1, 1875, (9) bonds, $1,000 each...	9,000
Nos. 1,901, 1,903, 1,984, letter B, favor N. O., Jackson & Gt. N. R. Rd., redeemable March 1, 1875, (3) bonds, $1,000 each.....	3,000
Nos. 631, 764, 794, 868, 985, 1,011, 504, 506, 523, 524, 525, 526, 527, 866, 851, 852, 1,120, 146, 503, 505, 535, 676, 759, 765, 766, 767, 516, 517, 518, 515, 306, 85, 86, 87, 158, 668, 451, 507, 509, 510, 511, 512, 1,031, 1,032, 1,036, letter C, favor N. O., Opelousas & Gt. W. R. Rd., redeemable May 1st, 1874, (45) bonds, $1,000 each.....	$45,000

80 *Answer, filed April 20, 1876, offered in evidence by Complainand Defendants on hearing of application for Injunction, January 22d, 1879.*

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } U. S. Circuit Court. No. 7,801.

Now comes the city of New Orleans, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Wherefore he prays to be hence dismissed with costs, and for general relief.

(Signed) B. F. JONAS, *City Attorney.*

Judgment, offered in evidence by Complainant and Defendants on trial of Application for Injunction, January 22d, 1879.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

APRIL TERM, 1876,
NEW ORLEANS, *Tuesday, May 2d,* 1876.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7,801.

81 This cause came up for trial. J. Q. A. Fellows for plaintiff. B. F. Jonas for defendant.

When, under the agreement on file, the jury was waived and the cause taken up before the court; and after hearing the pleadings and the evidence, the plaintiff's case being fully made out, it is ordered, adjudged, and decreed that the plaintiff, John Klein, do recover from the city of New Orleans, a municipal corporation of the State of Louisiana, the sum of eighty nine thousand dollars, with six per cent. interest per annum on seventy-seven thousand dollars from May 1st, 1874, on nine thousand dollars from 1st January, 1875, and on three thousand dollars from 1st March, 1875, till paid, and costs of suit.

Judgment rendered May 2d, 1876.

Judgment signed May 6th, 1876.

Signed: EDWARD C. BILLINGS, *Judge.*

Petition, filed January 14, 1878, offered by Complainant and Defendants on hearing of Application for Injunction, January 22d, 1879.

U. S. Circuit Court, District of Louisiana.

82 FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT COMPANY AND CITY of New Orleans. } No. 8,349.

To the Honorable the Judges of the United States Circuit Court for the Fifth Circuit and District of Louisiana.

The petition of Freeman Clark respectfully showeth:

That he, the said Freeman Clark, is a resident and citizen of the State of New York; that he has cause to and does complain of

the Jefferson City Gas-Light Company, a corporation under the laws of the State of Louisiana, and having its domicile in the city of New Orleans, in the State of Louisiana, and within the jurisdiction of this court; and of the city of New Orleans, a municipal corporation under the laws of the said State of Louisiana, the government of said municipal corporation is located within the jurisdiction of this court.

Petitioner further shows that on the 11th day of January, 1871, the said gas-light company and the city of Carrollton, then a municipal corporation under the laws of the State of Louisiana,
83 and located in the parish of Jefferson in said last-named state, entered into an agreement which is embraced in an ordinance that day passed by the mayor and council of said city of Carrollton, which ordinance is as follows, to wit:

"An ordinance to facilitate the introduction of gas within the limits of the city of Carrollton, to provide for making a contract with the Jefferson City Gas-Light Company in relation thereto, and to authorize the issuance of bonds, &c."

"Whereas, under an act of the legislature of the state, approved March 9th, 1869, the Jefferson City Gas-Light Company is given the exclusive privilege of supplying gas-light in the territorial limits of the city of Carrollton; and whereas the said gas-light company proposes to lay pipes and introduce [*gas*] in the city under certain conditions; therefore—

Section 1. Be it ordained, &c., That the mayor be and is hereby authorized to enter into a contract by public act with the said Jefferson City Gas-Light Company, as follows: The said Jefferson City Gas-Light Company shall, within six months from the date of contract, or as soon as can be, lay an eight-inch gas-main from
84 the lower line of the city of Carrollton up St. Charles street to the Carrollton railroad depot, on one side of said street, and a three-inch main from lower line up the other side of St. Charles street to Canal avenue, and up Levee street from the aforesaid depot to the upper line of the city of Carrollton, with the necessary branches, boxes, &c., and as soon as practicable shall lay branch-mains, pipes, &c., out Canal avenue, Dublin, Washington, and the other principal streets, in order to light the said streets, and supply the citizens with gas-light; also the said company shall provide and erect the necessary lamp-posts along the said line."

"That in consideration of the foregoing, that the city of Carrollton, through the mayor, shall provide and issue forty-five one thousand dollar bonds of the city of Carrollton, payable in thirty years, with interest at 8 per cent., payable semi-annually to the order of the said gas-light company, which bonds shall be dated and delivered to the said gas-light company when the pipes, mains, &c., are laid, and the lamp-posts erected along the line of St. Charles
85 street and Levee street, from Lower-line street to Upper-line

street, and gas turned in for use; provided the said company shall guarantee the said bonds and assume the payment of the principal thereof at maturity; and provided further, that if at maturity the said company shall fail to pay said bonds, then the said city shall pay the same and become the owner of all the gas-works, mains, pipes, &c., then lying and being within the present limits of the city of Carrollton.

"That the treasurer of the city of Carrollton shall specially appropriate and set aside in lawful money every month such amount or proportion of the taxes and dues of said city as shall be necessary to meet the interest on said bonds and such gas-bills as may accrue against said city, and that the mayor in said act shall be authorized to make such other agreements, not inconsistent herewith, as may be necessary to carry out the purposes of the ordinance, and make the said contract legal and conclusive on both parties hereto."

"Section 2. Be it further ordained, &c., That this ordinance shall take effect from and after its passage." "Passed January 11th, 1871."

86 Petitioner further shows that in pursuance of the authority conferred by said ordinance, the mayor of said city of Carrollton entered into a contract with the gas-light company, embracing the terms and stipulations contained in said ordinance, and the said company having complied with the said agreement and the conditions fixed in said ordinance, and being fully entitled thereto, the mayor of said city of Carrollton caused to be provided and executed forty-five bonds of said city of Carrollton, each for one thousand dollars, bearing interest at eight per cent. per annum, payable semi-annually, numbered from one to forty-five inclusive, which bonds were made payable thirty years from date, and were dated the 1st day of July, 1871, and to said bonds were attached interest-coupons, wherein it was stipulated to pay to bearer the sum of forty dollars on each bond as interest, the coupons being due on the 1st day of January and the first day of July of each and every year until the principal of said bonds should mature and become due.

87 And on the 1st day of July, A. D. 1871, the said mayor of the said city of Carrollton delivered said bonds with coupons attached to the said gas-light company, and thereupon the said company by its president, John Lockwood, placed upon each of said bonds the following endorsement and guaranty, to wit:

"The Jefferson City Gas-Light Company guarantee the principal and interest of this bond to the holder thereof.

"(Signed) JOHN LOCKWOOD, *President.*"

Petitioner further shows that soon thereafter the said company, for a good and valuable consideration, sold and delivered the said

bonds and coupons to petitioner, who is now the owner and holder thereof, and the sum paid for said bonds and coupons was received by and inured to the benefit of said gas-light company

Petitioner further shows that the territory embraced in said city of Carrollton was, by act of the legislature of this state, approved March 23d, A. D. 1874, annexed to the said city of New Orleans, and the said municipal corporation known as the said city of Carrollton was by said act abolished, and the said city of New Orleans became and is the successor thereof, as to its property, rec-
88 ords, &c., and was by said last-named act made liable to pay all indebtedness of the said city of Carrollton, and especially the said bonds and the coupons thereto attached.

Petitioner further shows that the coupons of said bonds which fell due July 1st, 1874, January 1st, 1875, July 1st, 1875, January 1st, 1876, July 1st, 1876, January 1st, 1877, July 1st, 1877, and January 1st, 1878, the four series in the aggregate numbering three hundred and sixty coupons, and each for the sum of forty dollars, are wholly due and unpaid, and that petitioner is the owner and holder thereof, and that there is due him from the Jefferson City Gas-Light Company and the said city of New Orleans in solido, on said overdue coupons, the aggregate sum of fourteen thousand four hundred dollars, with interest thereon at five per cent. per annum from judicial demand. The said coupons so overdue and unpaid are herewith filed and made a part of this petition.

Petitioner alleges amicable demand and a refusal thereof.

Wherefore petitioner prays that the said Jefferson City Gas-Light Company and the said city of New Orleans be cited, through their proper officers, to answer this petition within legal de-
89 lays, and on the final trial that petitioner recover judgment against said Jefferson City Gas-Light Company and the city of New Orleans in solido for said sum of fourteen thousand four hundred dollars, with legal interest thereon from judicial demand, and for costs and equitable relief.

(Signed) S. A. SHELDON, *Atty. for Petitioner.*

Answer of City of New Orleans, filed January 25th, 1878, offered in evidence by Complainant and Defendants on hearing of Application for Injunction, January 22d, 1879.

United States Circuit Court.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET ALS. } No. 8,349.

Now comes the city of New Orleans, cited as defendant herein, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Wherefore she respectfully prays to be hence dismissed with costs, and for general relief.

(Signed) B. F. JONAS, *City Attorney.*

90 *Answer and Call in Warranty, filed January* 29, 1878, *offered in evidence by Complainant and Defendants on trial of Application for Injunction, January* 22*d*, 1879.

United States Circuit Court.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET AL. } No. 8,349.

Now comes the defendant, Jefferson City Gas-Light Company, and denies all and singular the allegations contained in the petition tending to charge the defendant with responsibility for the coupons sued on, which are obligations of the city of New Orleans and not of this defendant.

This defendant avers that the city of Carrollton agreed to take up and pay said coupons as they matured, and the city of New Orleans, its successor, has assumed and has been charged with the obligations of the said city of Carrollton, and is bound to warrant and defend this defendant.

Wherefore this defendant prays that the city of New Orleans, through Edward Pilsbury, its mayor, be cited and called in warranty to defend this suit, and in case judgment be ren-
91 dered against this defendant in favor of plaintiff, that at the same time a similar judgment be rendered in favor of this defendant and against the city of New Orleans, and for costs and general relief. (Signed) THOS. J. SEMMES,
for Jefferson City Gas-Light Co.

Judgment, offered in evidence by Complainant and Defendants, January 22*d*, 1879, *on trial of Application for Injunction.*

Circuit Court of the United States, Fifth Circuit and District of Louisiana. November Term, 1877.

NEW ORLEANS, *Tuesday, March* 26, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS-LIGHT CO. ET AL. } No. 8,349.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, Freeman Clark, do have and recover of the defendants, the Jefferson City Gas-Light Company and the city of New Orleans in solido, the sum of
92 fourteen thousand four hundred dollars, with five per cent. interest thereon from judicial demand till paid, and costs of suit.

It is further adjudged and decreed that on the call in warranty the said Jefferson City Gas-Light Company do recover from the

city of New Orleans a like sum of fourteen thousand four hundred dollars, with like interest from judicial demand till paid, and costs.

Judgment rendered March 26th, 1878.

Judgment signed March 30th, 1878.

Signed: EDWARD C. BILLINGS, *Judge.*

Judgment, offered in evidence by Complainant on hearing of Application for Injunction, January 22d, 1879.

Extract from Minutes of 18th June, 1878. April Term, 1878.

NEW ORLEANS, *Tuesday, June 18th,* 1878.

Court met pursuant to adjournment. Present, Hon E. C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 2,695.

On motion of J. McConnell, solicitor for Samuel Smith,
93 W. B. Schmidt, W. H. Letchford, agent of Mrs. Aby Slocomb, executrix of estate of Cuthbert H. Slocomb, Charles T. Howard; and J. D. Martin and R. McCloskey, executors of Hugh McCloskey; and on suggesting to the court that in the above-entitled and numbered cause, on the 17th of May, 1877, a writ of fieri facias *were* issued against these appearers and movers in solido with other parties named in said writ, for the sum of one hundred and twenty-five thousand two hundred and sixty-five $\frac{79}{100}$ dollars, with legal interest on $84,800 from the 1st day of September, 1870, until paid, and costs of suit; and on further showing that on the 8th day of May, 1877, your said movers and appearers did severally pay to A. Schreiber and Sam'l H. Todd, trustees and legal subrogees of said plaintiff and complainant, *each* the sum of six thousand six hundred and twenty-five dollars on account of the said judgment, and thereby became legally subrogated to all and singular the rights and interest and ownership of said judgment, to said amounts and extent severally, with legal interest from said payments, with right to issue execution under said judgment for
said sums so paid severally and interest thereon against
94 the city of New Orleans, defendant in said suit; all which facts with other details will appear from the judgment and record herein and from the several receipts of said trustees annexed as Exhibits A, B, C, D, and E, and made part hereof.

And on further suggesting that said appearers are severally desirous of being reimbursed said sum of $6,625 each, so paid by each of them severally, and interest thereon from said 8th of May, 1877, by the city of New Orleans, the principal upon the bond whereon your petitioners were condemned as sureties jointly and severally as aforesaid.

Wherefore these appearers pray and now move the court, and it is now accordingly ordered by the court, that an order do issue herein, directed to the clerk of this court, directing him to award and issue execution in favor of said movers severally, for the sum of six thousand six hundred and twenty-five dollars each, with legal interest thereon from May 8th, 1877, until paid, and costs.

95 *Affidavit of John Klein, filed January 22d, 1879, offered in evidence by Defendants on trial of Application for Injunction.*

CITY OF NEW ORLEANS *vs.* JOHN A. MORRIS ET ALS. } No. 8,643. U. S. Circuit Court. In equity.

John Klein, one of the defendants to the bill filed in the above cause, being sworn, says: he is a broker by occupation, and is familiar with the value of the stock of the New Orleans Water-Works Company. He says that its present value is about thirty or thirty-one cents on the dollar, and that for the last six months its value has ranged from thirty to thirty-five cents on the dollar.

(Signed) JOHN KLEIN.

Sworn to and subscribed before me, on this 23d January, 1879.

(Signed) CHAS. S. RICE, *Master in Chancery.*

Notice in N. O. Democrat of 20th April, 1878, offered by Defendants on hearing of Application for Injunction, January 22d, 1879.

96 MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 19, 1878.

No. 4,459.—Administration Series.

An ordinance to provide for the liquidation of the floating indebtedness of the city of New Orleans; to authorize the advertisement for sealed proposals for the purchase of the stock of the New Orleans Water-Works Company, issued to the city of New Orleans, by holders of the floating indebtedness of said city.

Whereas, act No. 31 of the session of 1876 provides for the funding of the bonded debt of the city of New Orleans, and its exchange for premium bonds to the exclusion of the floating indebtedness, and no provision being made for securing the floating indebtedness of the said city; and—

Whereas, section 14 of act No. 33 of the extra session of 1877 provides: "That the city of New Orleans, through its council, shall have authority to apply the stock subscribed for by said city (in the New Orleans Water-Works Company), as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be mutually agreed upon between the city council and the holders of such bonded or floating debt;

Provided, that said stock shall not be sold at less than par,
97 and that when sold for obligations of the city it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the council reserving the right to reject any and all bids; therefor—

Be it ordained, That for the purpose of reducing the floating debt of the city of New Orleans, the city council, through the commissioners of the consolidated debt, shall advertise for sealed proposals to be made by the holders of certificates of appropriation, certificates for five-eighths tax, excess tax, tax warrants, interest-coupons due prior to July 1, 1875, interest-coupons water-works bonds, unpaid ordinances appropriating general funds of the years 1873, 1874, 1875, 1876, and 1877, registered judgments, criminal jury and coroner's warrants, city money, and of the certified debt of the city of Carrollton, for the purchase of the stock issued to the city of New Orleans in the New Orleans Water-Works Company; said advertisement to be made for fifteen days in two daily papers; said proposals to be opened after the expiration of said fifteen days by the said city council, which reserves the right to reject any and all bids.

Adopted by the council of the city of New Orleans, April 16th, 1878.

98 Yeas.—Brown, Cavanac, Diamond, Edwards, McCaffrey, Rengstorff.

ED. PILSBURY, *Mayor.*

A true copy.

THOS. G. RAPIER, *Secretary.*

Notice in N. O. Democrat of 4th July, 1878, offered in evidence by Defendants on hearing of Application for Injunction, January 22d, 1879.

City Ordinances.—Official.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 3, 1878.

No. 4,586.—Administration Series.

Be it ordained, &c., That the commissioners of the consolidated debt be and are hereby authorized to advertise from time to time for sealed proposals for the exchange of water-works stock, at not less than par, for the floating indebtedness of the city, in accordance with the acts of the legislature referring thereto.

Adopted by the council of the city of New Orleans, July, 2, 1878.

Yeas.—Brown, Cavanac, Diamond, Edwards, McCaffrey, Rengstorff.

ED. PILSBURY, *Mayor.*

A true copy.

THOS. G. RAPIER, *Secretary.*

99 *Notice in N. O. Democrat of 15th January, 1879, offered in evidence by Defendants on hearing of Application for Injunction, January 22d, 1879.*

New Orleans Water-Works Company's stock issued in exchange of floating debt.

	End of Nov., 1878.	Issued in Dec., 1878.	Total.
Certfs. appr'n	$30,852 36	.....	$30,852 36
⅘ tax excess and interest	176 66	.....	176 66
City money	2,869 10	.....	2,869 10
Tax warrants	100 00	.....	100 00
Carrollton city scrip	1,477 87	.....	1,477 87
Int. coupons full paid	114,384 75	.....	114,384 75
Int. coupons half paid	33,608 36	.....	33,608 36
Interest matured bonds	8,645 31	$26 95	8,672 26
Int. on gold certs., G. S.	33 25	28 27	61 52
Inquests	1,591 33	.....	1,591 33
Jury service	48 00	.....	48 00
Unp'd ords. '73	29,982 03	413 00	30,395 03
Unp'd ords. '74	152,026 70	1,237 99	153,264 69
Unp'd ords. '75	12,474 44	329 08	12,803 52
Unp'd ords. '76	152,026 26	3,202 95	155,703 21
Unp'd ords. '77	58,562 87	3,957 67	62,520 54
Unp'd ords. '78	26,720 77	2,836 66	29,557 43
Judgments	75,435 49	868 54	76,304 03
Total	$701,489 55	$12,901 11	$714,390 66
Shares	6,986	129	7,115

100 *Hearing and Continuance of Application for Injunction.*

Extract from Minutes of 22d January, 1879. November Term, 1878.

NEW ORLEANS, *Wednesday, January 22d*, 1879.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS *vs.* J. A. MORRIS ET ALS. } No. 8,643.

The application for an injunction pendente lite came on for trial.

E. H. McCaleb, city attorney, and E. H. Farrar, assistant city attorney, for complainant.

Kelly & Lazarus, Thomas & Lewis, and Joseph F. Hornor, for defendants.

And after hearing the evidence and argument, the matter is continued till to-morrow at 11 A. M.

Hearing and Submission of Application for Injunction.

Extract from Minutes of 23d January, 1879.

CITY OF NEW ORLEANS
vs. } No. 8,649.
JOHN A. MORRIS ET AL.

The hearing of the application for injunction was this
101 day resumed, and after argument of the city attorney, the court took time to consider, and allowed counsel on both sides one week from next Monday to submit briefs.

Joint and Several Plea of John A. Morris, Freeman Clark, and John Klein, filed February 8th, 1879.

In the Circuit Court of the United States for the District of Louisiana.

THE CITY OF NEW ORLEANS
vs. } In Equity. No. 8,643.
JOHN A. MORRIS AND OTHERS.

The joint and several plea of John A. Morris, Freeman Clark, and John Klein, defendants, to the bill of complaint of the city of New Orleans, complainant.

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged, to be true, in such manner and form as the same are therein and thereby set forth and alleged, for plea to the whole of said bill say:

That true it is, as in said bill averred, that these defendants, under the several judgments in their favor against the said city
102 of New Orleans in this court, specifically referred to in said bill, have caused writs of *fieri facias*, and *alias* and *pluries* writs of *fieri facias* to be issued thereunder *under* the said city, and that said writs are now in the hands of the marshal of this court, and that these defendants have caused to be seized under the said writs, for the purpose of having the same sold thereunder for the satisfaction of their respective judgments, certain stock in the New Orleans Water-Works Company held and owned by the said city, which stock is specifically described in the bill.

And these defendants say that the respective judgments in their favor against the said city, referred to in the bill, were all recovered upon obligations of said city antecedent in date to the passage of act number thirty-three, of the extra session of the General Assembly of the State of Louisiana of 1877, which act was approved March 31st, 1877, under the provisions of which act it is claimed in the bill the said stock of the city of New Orleans in the said water-works company is exempt from seizure for antecedent debts of said city.

These defendants are advised and therefore aver, as matter
103 of law, that under the laws of the State of Louisiana, which were in force when the respective debts for which they have recovered judgment were incurred, and under the laws of said state now in force, except as they may have been validly and constitutionally modified by the provisions of said act No. 33 of 1877, the said stock of the said city in the said water-works company, was and is liable to be seized and sold under execution to satisfy the respective judgments of these defendants against said city; and these defendants are further advised and therefore aver, as matter of law, that the said provisions of said act No. 33 of the extra session of 1877, set up and relied upon in the bill as exempting the said property from liability to be seized and sold to satisfy the said respective judgments of these defendants, are, in so far as they are intended to apply to debts of said city antecedent in date to the passage of said act, as were the debts due by the said city to these defendants upon *which* their said respective judgments were recovered; and in so far as it may be the intent of the said provisions of said act in any way to derogate from, impair, or obstruct the
104 right of these defendants to enforce their said respective judgments by the seizure and sale under execution of the said stock of the said city, are null and void, and entitled to no force, effect, or operation whatever by reason of their repugnancy alike to the constitution of the State of Louisiana, and to the Constitution of the United States; that by article 110 of the constitution of the state, the legislature of the state is forbidden and disabled from passing any retroactive law or any law impairing the obligation of contracts; and that, by the tenth section of the first article of the Constitution of the United States, the states are forbidden to pass any law impairing the obligation of contracts.

And these defendants further say that the operation and effect of the said provisions of said act No. 33, so set up and relied upon in said bill, if allowed to have the operation and effect claimed for them, will very seriously impair the obligation of their respective contracts, and materially obstruct, if it does not entirely prevent, their enforcement by execution.

These defendants say that the property of said city so claimed in said bill to have been exempted from liability for the ante-
105 cedent debts of said city by said act 33 of 1877, is of very large value: that the valuation put upon it by the statute itself is over a million dollars, and the actual and real value of it is over three hundred thousand dollars. And these defendants further say that they are not aware of the ownership by the said city, nor have they been able to discover the ownership by it or any other property liable for seizure for its debts, sufficient to satisfy to any material extent their respective judgments against the said city; and that if the effect and operation are allowed to said act No. 33 of 1877, that are claimed for it in the bill, the result will be that

defendants will not only be greatly obstructed in enforcing the remedy to which they were entitled by the laws in force when the debts were contracted, but will be prevented from collecting their debt at all to any material extent.

All which matters and things these defendants do aver to be true, and they plead the same to the said complainant's said bill, and pray the judgment of the court whether they ought to be required to make any further answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf sustained.

106 Signed: THOMAS & LEWIS,
Signed: KELLY AND LAZARUS, *Solicitors.*

We hereby certify that, in our opinion, this plea is well founded in point of law.

Signed: THOMAS & LEWIS,
Signed: KELLY AND LAZARUS, *Solicitors.*

John Klein, one of the defendants, being sworn, says: that this plea is true in point of fact, and is not interposed for delay.

Signed: JOHN KLEIN.

Sworn to and subscribed before me, this 8th day of February, A. D. 1879.

Signed: CHAS. S. RICE, *Master in Chancery.*

Entry in Chancery Order Book.—February 8th, 1879.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } No. 8,643.

The defendants, John A. Morris, Freeman Clark, and John Klein, have this day, by their solicitors, Kelly & Lazarus, and Thomas & Lewis, filed their joint and several plea to the
107 complainant's bill of complaint.

Entry at Rules—Appearance of Charles T. Howard.

March Rules 1879.—Monday, 3d.

CITY OF NEW ORLEANS
vs.
JNO. A. MORRIS ET ALS } No. 8,643.

Charles T. Howard, one of the defendants herein, has this day, by his solicitor, Jos. P. Hornor, entered his appearance to the complainant's bill of complaint.

Demurrer of Charles T. Howard.—Filed April 7th, 1879.

United States Circuit Court, District of Louisiana.

In Chancery.

CITY OF NEW ORLEANS *vs.* JOHN A. MORRIS ET ALS. } No. 8,643.

To the Honorable the Judges of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana.

The demurrer of Charles T. Howard, one of the defend-
108 ants to the bill of complaint of the city of New Orleans, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the said complainant has not by its said bill made such a case as entitles in a court of equity to any discovery from this defendant, or to any relief against him, as to the matters contained in the said bill or any of such matters; and that any discovery which can be made by this defendant touching the matters complained of in the said bill or any of them, cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against this defendant by the said bill, nor entitle the said complainant to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said
109 bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

Signed: JOSEPH P. HORNOR, *Solicitor.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

Signed: JOSEPH P. HORNOR, *of Counsel.*

Charles T. Howard, being duly sworn, deposes and says, that this demurrer is not interposed for delay.

Signed: CHAS. T. HOWARD.

Sworn to and subscribed before me, this 7th day of April, 1879.

[SEAL.] Signed: ANDREW HERO, JR., *Not. Pub.*

Entry at Rules, April Rules, 1879.

Monday, 7th.

CITY OF NEW ORLEANS *vs.* JOHN A. MORRIS ET ALS. } No. 8,643.

Charles T. Howard, one of the defendants herein, has this day,

by his solicitor, Jos. P. Hornor, filed his demurrer to the complainant's bill of complaint.

110 *Withdrawal of Demurrer and Submission of Cause.*

Extract from Minutes of 15th April, 1879.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } No. 8,643.

And now on this day in open court came and appeared Joseph P. Hornor, Esq., of the firm of Hornor & Benedict, and formally withdraws the demurrer heretofore filed, and adopts the plea filed on behalf of the defendants represented by Kelly and Lazarus and Thomas and Lewis. And thereupon, the counsel for the city of New Orleans and for the defendants being present, the cause was submitted to the court for decision.

Decree, entered and filed April 15, 1879.

In the Circuit Court of the United States for the District of Louisiana.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } In equity. No. 8,643.

111 This cause came on to be heard at this term and was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed as follows, viz: that the pleas of the defendants to the bill of complaint be maintained, that the injunction applied for be denied, and the bill be dismissed; and that complainant pay costs of suit, to be taxed.

April 15th, 1879.

Signed: EDWARD C. BILLINGS, *Judge.*

Motion of Appeal, filed April 16th, 1879.

United States Circuit Court, District of Louisiana.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET AL. } No. 8,643.

On motion of E. Howard McCaleb, city attorney, and of E. H. Farrar, solicitor for complainant, and on suggesting to the court that complainant is advised that there is error to her prejudice in the decree rendered herein and signed on April 15th, 1879, and on further suggesting that the amount in dispute herein far ex-
112 ceeds five thousand dollars, exclusive of interests and costs:

It is ordered by the court that complainant be allowed an

appeal from said decree, to have the effect and force of a *supersedeas*, returnable to the Supreme Court of the United States, at Washington, on the second Monday in October, 1879, on complainant's giving bond, with good and solvent security according to law, in the sum of ———— dollars.

It is further ordered that each of the defendants be cited to appear and answer this appeal according to law.

Affidavit of John Klein and Annex, filed April 18, 1879.

Circuit Court of the United States, District of La.

THE CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } No. 8,643.

John Klein, one of the defendants in the above-entitled and numbered cause, being sworn, says, that his occupation is that of a note and stock broker in the city of New Orleans, and has been for a number of years last past. That as such broker he is
113 familiar with the value of the capital stock of the New Orleans Water-Works Company, and he says that its present market value is from thirty-one to thirty-two cents on the dollar. In verification hereof he annexes hereto the quotations of sales of said stock, published in the New Orleans Democrat newspaper on the 17th instant. Signed: JOHN KLEIN.

Sworn to and subscribed before me, this 18th April, 1879.
Signed: CHAS. S. RICE. *U. S. Comr.*

Annex.

Financial and Commercial—Monetary.

OFFICE OF NEW ORLEANS DEMOCRAT,
WEDNESDAY EVENING, *April* 16, 1879.

New Orleans Clearing-House.

	Clearings.	Balances.
April 12	$1,575,238 14	$209,889 49
April 14	1,900,559 50	135,001 59
April 15	1,455,958 28	160,769 95
April 16	1,241,377 15	191,852 05
Total thus far	$6,173,133 08	$697,461 08

We quote exceptional paper 6 @ 7 pr. cent.; A 1 do. 7 @ —; second grade do. — @ —; loans on collaterals 6 @ 8; A 1 mortgage paper 8 @ —; second grade do. — @ — pr. cent. per annum.

Mexican dollars are now quoted at 84¼ @ 84¾, and trade dollars at 90 @ 95, and quarters (American) are quoted at 99 @ 99½.

114 The sales of foreign exchange were small and rates are firm. Bank sterling rules at 487½, and bill of lading and clear bills at 484 and 485.

French bills are firm and quiet. We quote francs — ; commercial 5.21¼.

Bank sight-bills opened firm and closed strong at ¼ pr. cent. premium for bank counter rate; commercial is quoted ⅛ pr. cent. premium.

State consols firm at 51¼ @51½.

Premium bonds closed strong at 25⅞ @ 26½.

Stocks are firm.

New Orleans Stock Exchange Sales.

First call—10 A. M.

$5,000 premium bonds	25⅞

States 50⅜ @ 51½; premiums 25⅞

Second call—12 M.

15 shares People Bank	47½
$7,000 premium bonds	26½
10,000 premium bonds	26

States 50¾ @ 51¼; premiums 25⅞ @ 26½.

Third call—2 P. M.

50 shares Water-Works Company	31¾
$5,000 state consols	51½
5,000 state consols	51⅝

States 51⅜ @ 51⅞; premiums 25⅞ @ 26⅛,

Closing call—3.15 P. M.

$3,000 premium bonds	26
10,000 premium bonds (S.60)	25⅞

States 51¼ @ 51½; premiums 25⅞ @ 26½.

[By telegraph.]

115 New York, April 16.—Money closed at 4 pr. cent. Exchanges closed steady at 487 @ 488½.

Government closed steady; currency 68, 121¾ @ 122.

Clearing-house statement.—Exchanges $86,059,719; balances $6,302,965.

Hearing and Submission of Motion for Appeal.

Extract from Minutes of April 18th, 1879.

CITY OF NEW ORLEANS *vs.* JOHN A. MORRIS ET ALS. } No. 8,643.

This cause came on to be heard on the complainant's application for an appeal to operate as a supersedeas, and the same having been argued by counsel for the parties respectively, the court took time to consider.

Order—Devolutive Appeal allowed.

Extract from Minutes of 24th April, 1879.

CITY OF NEW ORLEANS
vs.
JOHN A. MORRIS ET ALS. } No. 8,643.

The court having duly considered the complainant's motion
116 of the 16th April, 1879, for an appeal to operate as a supersedeas, it is ordered that said motion be denied, but that a devolutive appeal be granted in this case, returnable to the Supreme Court of the United States on the first day of its next term, on giving bond and security in the sum of two hundred and fifty dollars.

Bond of Appeal, filed April 30th, 1879.

UNITED STATES OF AMERICA.

Know all men by these presents, that we, the city of New Orleans, herein appearing through Isaac W. Patton, mayor, as principal, and T. S. Barton, as security, are held and firmly bound, jointly and severally, unto John A. Morris, Freeman Clarke, John Klein, Chas. T. Howard, and Jack Wharton, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Morris, Klein, Clarke, Howard, and Wharton, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators,
117 firmly by these presents.

Sealed with our seals, and dated the 30th day of April, in the year of our Lord eighteen hundred and seventy-nine.

Whereas, the said city of New Orleans having heretofore, to wit, on the 24th day of April, 1879, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the 15th day of April, 1879, by the Circuit Court of the United States for the Fifth Circuit, holding sessions in and for the district of Louisiana, in the suit of City of New Orleans vs. John A. Morris et als., No. 8,643 of the docket thereof:

Now, the condition of the above obligation is, that if the above-bounden city of New Orleans shall prosecute its said appeal to effect, and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) I. W. PATTON, [SEAL.]
Mayor City of New Orleans.

(Signed) T. S. BARTON. [SEAL.]

Signed, sealed, and delivered in the presence of—

(Signed) E. H. FARRAR.

Bond approved.

(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana, do hereby certify, that the foregoing 117 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The City of New Orleans versus John A. Morris and others, No. 8,643 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of August, A. D. 1879.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States Judge for the District of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court: that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of August, A. D. 1879.

EDWARD C. BILLINGS, *Judge.*

THE UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Louisiana.

The President of the United States to Freeman Clarke, John A. Morris, Charles T. Howard, John Klein, and Jack Wharton, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for an appeal entered and filed in the clerk's office of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana, in the suit wherein you and each of you are defendants and appellees, and the city of New Orleans is complainant and appellant, to show cause, if any there be, why the judgment decree against the said city of New Orleans, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

EDWARD C. BILLINGS, *Judge.*

(Endorsed:) United States Circuit Court. No. 8,643. City of New Orleans vs. John A. Morris et al. Citation to Freeman Clarke et al. Marshal's return. Received May 19, 1879, by the U. S. marshal, and.

Received May 19th 1879, by the U. S. marshal, and on May 20th, 1879, I served true copies of the within citation of appeal on each of the appellees herein named, as set forth in the following manner, to wit: Freeman Clark, John A. Morris, and John Klein, by handing the same to J. W. Thomas, Esq., the attorney of record, in person, he stating that he was authorized to accept service for the aforesaid Freeman Clark, John A. Morris, and John Klein. Charles T. Howard, by handing the same to Joseph P. Hornor, the attorney of record, in person, he stating that he was authorized to accept service for the aforesaid Charles T. Howard. Service accepted by Jack Wharton, U. S. marshal. All were served in the city of New Orleans, District of Louisiana, on the date and in the manner above set forth.

E. S. CURRY,
Dy. U. S. Marshal District of Louisiana.

On the 8th day of August, 1879, personally appeared before me E. S. Curry, a deputy United States marshal for the district of Louisiana, and make oath that he served a true copy of the within citation of appeal on Freeman Clark, John A. Morris, John Klein, Charles T. Howard, and Jack Wharton, U. S. marshal, as stated in his official return hereon.

E. S. CURRY,
Dy. U. S. Marshal District of Louisiana.

Sworn to and subscribed before me, this 8th day of August, 1879.

F. A. WOOLFLEY,
Commr. U. S. Circuit Court District of Louisiana.

(Endorsed on cover:) Louisiana C. C. U. S. No. 874. The City of New Orleans, appellant, vs. John A. Morris, Freeman Clarke, Chas. T. Howard, John Klein, and Jack Wharton. Filed 3d October, 1879.

STIPULATION CORRECTING RECORD 284.

1 Supreme Court of the U. S.

THE CITY OF NEW ORLEANS, APPELLANT,
vs.
JOHN A. MORRIS, FREEMAN CLARK, CHAS. T. Howard, and Jack Wharton. } No. 284.

Appeal from the circuit court of the U. S. for the district of Louisiana.

It is hereby agreed & stipulated between the counsel for the appellant and the appelleys that the extract from the minutes of the circuit court of the entry made April 15th, 1879, and found on page 48 of the printed record, does not truly set forth the terms of the oral submission of this cause, and that the last sentence in said extract from the minutes should read as follows:

"And thereupon the counsel for the City of New Orleans and for the defendants being present, the cause was submitted to the court for decision upon the sufficiency of the defendants' pleas," there being no controversy as to the matters of fact averred in the plea.

2 HENRY B. KELLY,
For Defendants.
E. HOWARD McCALEB,
For Complainant.

NEW ORLEANS, *March 20th*, 1882.

(Endorsed:) Supreme Court U. S. 1881, October term. No. 284. The City of New Orleans, app'l't, vs. John A. Morris et al. Stipulation correcting record. Filed 31st March, 1882.